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Supreme Court, U.S.
FILED
APR 18 2011
OFFICE OF THE CLERK

No. 10 12 7 8

In The Supreme Court of the United States

Edward H. Flint
Petitioner

v.

Donald L. ARMSTRONG JR.
Respondent

On Petition for Writ of Certiorari
Court of Appeals for the Sixth Circuit.

PETITION FOR WRIT OF CERTIORARI

EDWARD H. FLINT PRO, SE.
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Pro, SE, Counsel for Petitioner

QUESTIONS PRESENTED

1-Does the ruling by the United States Supreme Court in **Stump v Sparkman 435 U.S. 349, 357 (1978)** eliminate the requirement that a judge has to obey all court rules, cannons and state laws

2- What are the limits and meanings of **"normal functions"** and **"clear absence of all jurisdiction** in granting immunity to a judge as used in the Judgment issued by the United State Supreme Court in **Stump v Sparkman 435 U.S. 349, 357 (1978)**?

3- Is violating of the Kentucky Supreme Court Rules, violating Kentucky Statutes, denying a party Due Process violating Kentucky's Code of Procedures Rules and Cannons considered to be a normal function for a judge as stated in **Stump v Sparkman 435 U.S. 349, 357 (1978)**?

4- Was the trial court correct that no cause of action exists against a judge for judicial actions except when the judge acts was in the clear absence of jurisdiction, even when the judge denied Petitioner a Due Process trial and the judge violated Kentucky Supreme Court Rules and state laws and cannons ?

5- Was the trial and appeal courts correct when they ruled, a judge has immunity on all decisions a judge makes regardless of the circumstances, if court rules and state laws, has been violated.

6- Is Chief Judge Roberts correct when he stated **"Judges are like umpires. Umpires don't make the rules. They apply them. The role of an umpire and a judge is critical. The judge makes sure everybody plays by the rules**

IN THE SUPREME COURT OF THE UNITED STATES

NO._____

Edward H. Flint, **Petitioner**

v.

Donald E. Armstrong, Judge **Respondent**

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Edward H. Flint the Petitioner prays, that a Writ of Certiorari issue to review the judgment of the Sixth Circuit Court case No. 10-5018 entered in the above case on, October 13, 2010

OPINION BELOW

The judgment of the Sixth Circuit entered on October 13, 2010

JURISDICTION

The jurisdiction of the Supreme Court is invoked under 28 USC 1254

Parties

Petitioner
Edward H. Flint,

Respondents
McKay Chauvin, Judge

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STATEMENT OF THE CASE

Procedural history

This action arises out of a complaint filed in Jefferson County Kentucky Circuit Court on October 2007 case No. 07-CI-10558. Petitioner was Pro, Se and was 76 years old. The case was about a flawed election for officers at a Condo Association where Petitioner lived. Petitioner knew based on evidence he had seen, the ballots had been substituted for and when the Board of Directors refuse to response to his letters asking that a meeting be called for a reelection and the Petitioner filed a suit.

Petition was Pro, Se and three judges violated Kentucky Supreme Court's rule regarding the moving and reassigning of cases. The judges by Kentucky Supreme Court Rules could not move the case without a reason, which they didn't have.

Petitioner sued the three judges in Federal District Court. The District Court granted the three judges immunity and dismissed Petitioner case. Petitioner appealed to the Court of Appeals. The Court of Appeals upheld the District Court order dismissing the appeal. Petitioner appealed to this court for Writ of certiorari and this court denied Petitioner certiorari.

Petitioner filed a different case in Jefferson County District Court and the first judge, on the first hearing denied Petitioner every thing he asked for and out of the blue for no reason,(as the tape of the hearing shows), the judge threaten to put Petitioner in jail. Petitioner sued this judge in Federal Court for terrorist threatening.

Petitioner sued this judge in Federal Court for terrorist threatening.

The case was assigned to Judge Armstrong the respondent. Judge Armstrong refused to let Petitioner have any discovery. It became clear that no judge in Jefferson County was going to give Petitioner a fair and honest trial. Petitioner sued Judge Armstrong in Federal Court.

Petitioner then trying to find justice moved the case to Jefferson County Circuit Court. The first judge would not grant Petitioner discovery and Petitioner sued him in Federal Court.

The case was moved to a second judge in Circuit court. This judge refused to give Petition any discovery. Petitioner sued him in Federal court and then asked him to recused him self from the case and he refused to recuse him self.

Petitioner asked all four judges to let him move the case to another county and all four refused.

Petitioner now has the case in the Kentucky Court of Appeals and the Kentucky Supreme Court, regarding the judge recusing him from the case.

The Federal District Court has dismissed all four of Petitioners cases against the judges. The Court of Appeals has denied Petitioner any relief. On all case where Petitioner has sued judges the District Court has dismiss all cases based on the fact that regardless of the bases for the suit, judges have

absolute immunity. Each Judge cited **Stump v Sparkman 435 U.S. 349, 357 (1978)**

The Court of Appeals upholds the District Courts and states that the Supreme Court 1978 ruling has not has not changed nor has the language in Stump v Sparkman been changed or clarified and therefore they have no choice but to grant immunity, regardless of how bad the actions by the judge was.

Arguments

Petitioner argues that the Sixth Circuit Court of Appeals hung it case based on the district court dismissal that stated "Armstrong is entitled to absolute judicial immunity." The Appeals court stated "that a judge will not be deprived of immunity because the action he or she took was in error." The Appeal Court cited *Stump* v *Sparkman* 435 U.S. 349, 356-357 (1978). The court again quoted "immunity is overcome only when a judge engages in non-judicial actions." Petitioner states that denying Due Process, violating Courts rules and state's laws can not be judicial actions and therefore is non-judicial.

If this court doesn't clarify the Stump v. Sparkman there will never again be an honest judge in America, someday. All Judges sooner or later will harm someone and use this case as excuses.

There is no way the court system in America can keep judges in control from abusing the system except for the possibility that a judge could be sued by a jury. The judge in this case as the record will show violated every issue to see that Petitioner never received a fair trial. Judge Armstrong had pressure on him, from other judges, to stop Flint.

Recently the United State Senate removed a judge for violating rules and being on the take. If this court thinks the same thing is not going on across, then you are living in a make believe land in your mind.

This court has the future of the America justice system in their hands. By leaving the Stump v Sparkman case as is, will set off a fire storm in every court house across America to see who has the most money to buy a judge in a case. You children, your grandchildren and all future children depends on this court's action.

Petitioner again will tell this court that there are many cases being handled today in our country by corrupt judges and congress can not pass a law to stop it. The only chance of having an honest justice system is by this court writing the rules on how a judge must conduct them self and allow judges to be sue if it can be proven they violated the rules. This court in 1978 let the pendulum swing to far when they wrote Stump v. Sparkman and this court now has a chance to frame the future of justice in America, even more that the framers of our constitution. Does any member of this court believe that our fore fathers would have let judges do as the please.

Our fore fathers could not see the future and see how many judges can be so corrupt. If they could, maybe they would have set up a different justice system, because they wanted an honest system.

Our country was founded by people who were running away from what is now taking place by judges.

If the President of our country can be sued then why should anyone be exempt?

This court owes it to every America to frame the rules on which a judge can be sued or tell the people that a judge can not be sued under any condition.

This court has a chance to leave its mark on America history forever.

REASONS FOR GRANTING THE WRIT

1- This honorable body should want to see that every citizen of America is granted Due Process.

2- This court should and needs to clarify the meaning of the wording of "Clear Absence of all Jurisdiction and normal functions" as used in Stump v. Sparkman.

3- Straightening out the question of immunity for judges, which has been raging ever since the ruling was made in 1978, will true confidence be in America, that the justice system is working hard to make sure every American alike will receive justice in the entire court system, through out America.

4- Petition deserves an opportunity to try his case.

5- If all judges was honest this ruling would not be needed, but like all parts of our society, there are bad eggs in every group.

CONCLUSION

1- The language in Stump v. Sparkman is vague, open for different interpretations and all parties in the justice system needs to know their simplified actual meanings.

2- America needs to know what a justice is in order to remove any doubt. The decision was 5 to 3 with one dissenting vote when this court made its ruling in 1978. A clarification is good for America. When there is no doubt of a court's ruling, it's good for America and for justice.

3-Petitioner has been harmed by the lower courts interpreting. He has other cases that will come to this court unless he gets a clarification.

4- Petitioner asks this honorable body to move this issue forward with a clear interpretation.

5-Unless the court clarifies the meaning of Stump v Sparkman, immunity for judges, the issue will expand as to what a judge can do in their court. There has to be a limit of all judge's actions, at some point in law and this court needs to make sure that all decisions are correct decisions, so everyone is playing the same game, by the same rules.

6-A clear definition gives honest judges, lawyers and average persons a better shot at equal justice.

7-Every honest ethical judge in America would welcome a clarification of the meaning of Stump v. Sparkman.

Respectfully submitted,

s/ Edward H. Flint, Pro, Se.
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No. 10-5018

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDWARD H. FLINT, **Plaintiff-Appellant**

v.

JUDGE DONALD L. ARMSRTONG,
Defendant-Appellee

On Appeal from the United States District Court for the Western District of Kentucky

FILED: MARCH 15, 2010

Before SUHRHEINRICH, GIBBONS, and MCKEAGUE, Circuit Judges.

Edward H. Flint, a pro se Kentucky resident, petitions the court to rehear its order of October 13, 2010 affirming a district court order dismissing his civil rights complaint.

Upon review, the petition for rehearing is denied. We did not misapprehend or overlook any point of law or fact when we issued our prior order. Fed. R. App. P. 40(a)

ENTERED BY ORDER OF THE COURT

(s) Leonard Green
Leonard Green, Clerk

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO. 10-5018

EDWARD H. FLINT, **Plaintiff-Appellant**

v.

JUDGE DONALD L. ARMSRTONG, JR

Defendant-Appellee

On Appeal from the United States District Court for the Western District of Kentucky

FILED OCTOBER 13, 2011

Before SUHRHEINRICH, GIBBONS, and MCKEAGUE Circuit Judges

Edward H. Flint proceeding Pro, Se, appeals from a district court judgment dismissing his civil rights complaint construed as brought under U.S.C. # 1983. This case has been referred to a panel of the court pursuant to rule 34(j)(1), rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a)

Seeking monetary and equitable relief, Flint sued Judge Donald L. Armstrong Jr, claiming that the defendant violated his constitutional rights by engaging in improper conduct during a case that Flint filed in the Jefferson County District Court. Flint alleged that Armstrong failed to carry out his responsibilities as a judge, that Armstrong exhibited bias against him and acted vindictively

because Flint had previously sued three other Jefferson County judges; that Armstrong discriminated against him; and that Armstrong conspired with the previously- mentioned judges. The district court grand Armstrong motion to dismiss, concluding that he was entitled to absolute judicial immunity because the actions complained about were taken in the scope of his scope of his official duties

On appeal, Flint argues that the district erred in dismissing his complaint on the grounds of judicial immunity. He also explains, for the first time, the various actions taken by Judge Armstrong that he claims his rights, including transferring the case to a circuit despite Flints concern that he would not receive justice based on his prior lawsuit and the previously mentioned circuit judges; denying Flint's motion for recusal; denying Flint motion to transfer the case to Oldham County; failing to report misconduct on the part of counsel for the defendants in his civil cases; failing to compel the underlying defendants to answer an interrogatory question and failing to compel a non-party insurance agency to produce documents requested by Flint.

Upon review, we conclude that the district court properly dismissed Flint complaint. We review de novo a district court's dismissal of a complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be grant. See *Benzon v. Morgan Stanley Distrub.,Ins.*, 420 F3d 598, 605 (6th Cir.2005). In considering a motion to dismiss under Rule 12(b)(6), the court " must accept all well-pleaded factual allegations of the complaint as true and construe the complaint in the light most favorable to the plaintiff." Benzon, 420 F.3d at605 (citing *Inge v. Rock Fin. Corp.*, 281 F.3d 613,619 (6th Cir. 2005). [O] a claim has been

stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint."

Bell Atlantic Corp v. Twombly, 550 550 U.S. 544,563 (2007). The complaint will survive a motion to dismiss if it "contain(s) sufficient factual matter, accept as true, to state a claim of relief that is plausible on its face."*Ashcroft v. Iqbal*, 129 S. CT. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 750.

Insofar as Flint sued Armstrong in his individual capacity, Armstrong is entitled to absolute judicial immunity. The Supreme Court has explicitly stated that a judge will not be deprived of immunity because the action he or she took was in error, was done maliciously, or was in excess of his or her authority. *See Stump v. Sparkman*, 435 U.S. 349,356-57 (1978). Absolute judicial immunity is overcome only when a judge engages in non-judicial actions or when the judge's actions though judicial in nature, are taken in complete absence of all jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)

Absolute judicial immunity attaches only to actions undertaken in a judicial capacity. *See Barnes v. Winchell*, 105 F. 3d 1111, 1116 (6th Cir. (1997). Whether an act is judicial defends on the nature and function of the act, not the act itself. *Id*. In examining the function normally reformed by a judge, courts have found that judicial act resoling disputes between parties who have invoked the jurisdiction of the court. *Id*. The actions complained of here, are clearly judicial decisions in the managing the court's docket.

Flint does not dispute that Armstrong had the authority to transfer his case; he merely argues that it was done improperly in his case and that the transfer was motivated by the judge's bias and intent to impede Flint because he had previously sued three other judges.

However, as stated above, a judge will not be deprived of immunity because the action he or she took was in error or was done maliciously or was in excess of his or her authority. *See Stump*, 435 US at 356-56. Hence the district court properly concluded that the defendant was entitled to judicial immunity.

Insofar as Flint sued Armstrong in his official the suit is barred by sovereign immunity. See S.J. v. Hamilton County, OHIO, 374 F.416, 419 (6th Cir 2004)

ENTERED BY ORDER OF THE COURT

(s) Leonard Green
Leonard Green, Clerk

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE

CIVIL ACTION NO.3:09CV-878-H

EDWARD H. Flint PLAINTIFF

v.

JUDGE DONALD E. AMSTRONG, JR. DEFENDANT

ORDER

Plaintiff has filed a lawsuit against Kentucky District Court Judge Donald E. Armstrong, in connection with his actions in a case involving Plaintiff. Defendant has moved to dismiss this complaint on numerous grounds including those of sovereign immunity and judicial immunity. The court has reviewed the pending motions and agree entirely with the basses for Defendant's request for dismiss.

Plaintiff is not alleging that Judge Armstrong did not have jurisdiction over his case. Quite the contrary, Plaintiff claims are based on the assertion that Judge Armstrong had jurisdiction over this case but failed to manage it in a proper manner. No cause of action exists against a judge for judicial actions except acts in the clear absence of jurisdiction. Here, Plaintiff claims against Judge Armstrong are barred by absolute judicial immunity and must be dismissed.

Being otherwise sufficiently advised,
IT IS HERE BY ORDERED that Defendant's motion to dismiss is SUSTAINED and Plaintiff complaint is DISMISSED WIT PREJUDICE

This is a final and appealable order.

December 29, 2009

/s/ **John G. Heyburn II, Judge**
United States District Court

cc Edward H. Flint, Pro Se
Counsel of record